

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI**

In Re: SAUCIER BROS. ROOFING, INC.

**CHAPTER 11
NO: 16-50775-KMS**

**APPLICATION TO SELL REAL
PROPERTY FREE AND CLEAR OF LIENS**

(10 Acres – Highway 67)

COMES NOW, SAUCIER BROS. ROOFING, INC, Debtor in the above styled and numbered cause, by and through undersigned counsel, and files this its Application to Sell Real Property Free and Clear of Liens, pursuant to 11 U.S.C. § 363, and would respectfully showing unto the Court as follows:

1. The Debtor filed a petition for relief under Chapter 11 of the Bankruptcy Code on May 5, 2016, in the above styled and numbered cause.

2. This Court has jurisdiction pursuant to 11 U.S.C. § 1334, and this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(N).

3. At the time of the filing of the Petition the Debtor was the owner of a parcel of real property located in the City of Biloxi, Mississippi and in the Paradise Found Fruit & Truck Farms Subdivision on Highway 67 (the “Property”), said Property being approximately 10 acres, unimproved, and being more particularly described as:

Parcel A

A parcel of land lying and being a portion of Lots 1 and 2, Block 30, Paradise Found Fruit & Truck Farms Subdivision, City of Biloxi, Harrison County, Mississippi, as per Plat Book 10, Page 3, being more particularly described as follows:

Commencing at an existing concrete monument marking the NW corner of Section 6, Township 7 South, Range 9 West, Harrison County, Mississippi; thence run South 10.7 feet to a point; thence run East for 1348.48 feet to a point; thence run South 00 degrees 46 minutes 22 Seconds East for 470.62 feet to an iron rod and the Point of Beginning; thence run East for 185.42 feet to an iron rod; thence run South for 771.79 feet to an iron rod on the apparent North margin of Old Highway 67; thence run South 89 degrees 25 minutes 19 seconds West along said North margin for 50 feet to an iron rod; thence run North 00 degrees 46 minutes 22 seconds West along the East line of the property described at Deed Book 415, Page 187, for 150.0 feet to an iron rod; thence run South 89 degrees 40 minutes 04 seconds West along the North line of the property described at Deed Book 415, Page 187, for 125.0 feet to an iron rod; thence run North 00 degrees 46 minutes 22 seconds West for 623.09 feet to an iron rod and the point of beginning.

Parcel B

A parcel of land lying and being a portion of Lots 1 and 2, Block 30, Paradise Found Fruit & Truck Farms Subdivision, City of Biloxi, Harrison County, Mississippi, as per Plat Book 10, Page 3, being more particularly described as follows:

Commencing at an existing concrete monument marking the NW corner of Section 6, Township 7 South, Range 9 West, Harrison County, Mississippi; thence run South 10.7 feet to a point; thence run East for 1348.48 feet to a point; thence run South 00 degrees 46 minutes 22 seconds East for 470.62 feet to a point; thence run East for 185.42 feet to an iron rod and the point of beginning; thence run South for 771.79 feet to an iron rod on the apparent North margin of Old Highway 67; thence run North 89 degrees 25 minutes 19 seconds East along said North margin for 169.52 feet to an iron rod; thence run North for 770.08 feet to an iron rod; thence run West for 169.51 feet to the point of beginning.

Parcel C

A parcel of land lying and being a portion of Lots 1 and 2, Block 30, Paradise Found Fruit & Truck Farms Subdivision, City of Biloxi, Harrison County, Mississippi, as per Plat Book 10, Page 3, being more particularly described as follows:

Commencing at an existing concrete monument making the NW corner of Section 6, Township 7 South, Range 9 West, Harrison County, Mississippi; thence run South 10.7 feet to a point; thence run East for 1348.48 feet to a point and the point of beginning; thence run South 00 degrees 46 minutes 22 seconds East for 470.62 feet to an iron rod; thence run East for 354.93 feet to an iron rod; thence run South for 770.08 feet to an iron pin on the apparent North margin of Old Highway 67; thence run East along the apparent North margin of Old Highway 67 for 50 feet to a point; thence run North 950.0 feet to a point; thence run West for 107.13 feet to a point; thence run North 00 degrees 46 minutes 18 seconds West for 290.59 feet to a point; thence run South 89 degrees 55 minutes 17 seconds West for 300.23 feet to the point of beginning.

4. The Debtor has entered into a Contract for the Sale and Purchase of Real Estate (the "Contract") as to the Property, with **Gollott Investments, LLC** or its assigns for a sale price of \$242,000.00. A copy of the Contract is attached hereto as **Exhibit "A"** and incorporated herein. Gollott Investments, LLC is a good faith purchaser as contemplated by 11 U.S.C. § 363(m).

5. Hancock Bank holds a promissory note and first deed of trust secured by the Property with a projected payoff balance of approximately \$200,000 as of August 1, 2016, which is to be paid in full from the proceeds of the sale, with the final amount to be provided by Hancock Bank to the closing attorney immediately prior to closing. Said first deed of trust is dated September 7, 2006, and is recorded at Instrument No. 2006-6501T-J2 in the land records of the Second Judicial District of Harrison County, Mississippi.

6. Property taxes are due to Harrison County and the City of Biloxi for tax year 2014 in combined amount of approximately \$1,300, or which will be paid at closing.

7. Property taxes are due to Harrison County and the City of Biloxi for tax year 2015 in combined amount of approximately \$1,200, or which will be paid at closing.

8. Property taxes are projected to be due to Harrison County and the City of Biloxi for the tax year 2016 for the time prior to closing that the Property is owned by the Debtor during 2016, which are estimated to be in the approximate amount of \$1,100.

9. As set forth in the Contract, the Debtor has agreed that the following expenses, charges and fees should be paid from the proceeds of the sale:

- a. Proration of the City/County *ad valorem* taxes for the current year of approximately \$1,100, with the exact amount herein determined immediately prior to closing.
- b. Payment of city/county *ad valorem* taxes for tax year 2015, in the amount of approximately \$1,200, with the exact amount being determined immediately prior to closing.
- c. Payment of city/county *ad valorem* taxes for tax year 2014, in the amount of approximately \$1,300, with the exact amount being determined immediately prior to closing.
- d. Payment to Hancock Bank of approximately \$200,000, with the actual payoff amount being provided by Hancock Bank to the closing attorney.

10. There are no real estate commissions or brokerages fees to be paid in connection with this transaction, and the estate will not bear any closing costs, other than hourly charges of its counsel.

11. The sale contemplated by this motion should release the Property from all existing liens and transfer such lien to the proceeds of sale.

WHEREFORE, Debtor prays that this Court will enter the Order authorizing the sale of the above stated real property by the Debtor to Gollott Investments or its Assigns pursuant to the Contract, provided payment is made in the following manner:

- a. Proration of the City/County *ad valorem* taxes for the current year of approximately \$1,100, with the exact amount herein determined immediately

prior to closing.

- b. Payment of city/county *ad valorem* taxes for tax year 2015, in the amount of approximately \$1,200, with the exact amount being determined immediately prior to closing.
- c. Payment of city/county *ad valorem* taxes for tax year 2014, in the amount of approximately \$1,300, with the exact amount being determined immediately prior to closing.
- d. Payment to Hancock Bank of approximately \$200,000, with the actual payoff amount being provided by Hancock Bank to the closing attorney.

The Debtor further prays that the Court authorize that the Property be sold free and clear of all liens, which liens shall attach to the proceeds and the amount owed on said liens, and to make a finding that the purchaser is a good faith purchaser as contemplated by 11 U.S.C. §363(m).

The Debtor further prays that it be granted such other, further and general relief to which it may be entitled.

Respectfully submitted this the 14th day of September, 2016.

SAUCIER BROS. ROOFING, INC., Debtor
/s/ Patrick A. Sheehan
Patrick A. Sheehan, Counsel for Debtor

CERTIFICATE OF SERVICE

I, the undersigned PATRICK A. SHEEHAN, hereby certifies that on this day, I electronically filed the foregoing with the Clerk of the Court using the ECF system, which sent notification of such filing to the following: Christopher James Steiskal, Sr., United States Trustee, at christopher.j.steiskal@usdoj.gov and the United States Trustee at USTPRegion05.JA.ECF@usdoj.gov; Cynthia L. Eldridge, cindy.eldridge@usdoj.gov. I further certify that I have this day mailed, postage prepaid, a true and correct copy of the above Motion to the list of creditors attached hereto. This the 14th day of September, 2016.

/s/ Patrick A. Sheehan
PATRICK A. SHEEHAN

Sheehan Law Firm, PLLC
429 Porter Avenue
Ocean Springs, MS 39564
(228) 875-0572 / fax (228) 875-0895
MS Bar No. 6747

CONTRACT FOR THE PURCHASE AND SALE OF REAL ESTATE

1. **Parties.** This Contract for the Purchase and Sale of Real Estate ("Contract"), is made on this the ____ day of August, 2016 (the "Effective Date"), by and between Saucier Brothers Roofing, Inc., Debtor-in-Possession in Chapter 11 Case No. 16-50775-KMS in the U.S. Bankruptcy Court for the Southern District of Mississippi ("Seller"), and Gollott Investments, LLC or its assigns ("Purchaser"); and the parties hereby agree as follows:

2. **Property.** Seller agrees to sell and the Purchaser agrees to purchase the Property known as approximately 10 acres being a part of Paradise Found Fruit & Truck Farms, Highway 67, Biloxi, Mississippi (the "Property").

3. **Effective Date.** This Revised Contract shall become effective and in force and effect when the Purchaser and Seller have fully executed this Contract (the "Effective Date").

4. **Purchase Price.** The Purchaser will pay a Purchase Price (the "Purchase Price" of Two Hundred and Forty-Two Thousand Dollars (\$242,000), to be paid as follows:

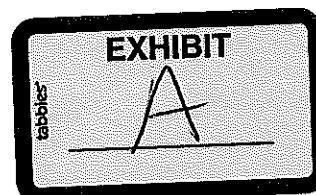
Ernest Money Deposit:	\$ 1,000
Cash at Closing:	<u>\$241,000</u>
Total	\$242,000

5. **Closing.** Closing shall occur at the office of the Sheehan Law Firm, PLLC, 429 Porter Avenue, Ocean Springs, MS 39564 (the "Escrow Agent"), within thirty (30) days after the end of the Contingency Period as set out in Paragraph 7, below.

6. **Earnest Money.** Purchaser has deposited with Security Title Guaranty Corporation of Baltimore, through the Escrow Agent, the sum of One Thousand Dollars (\$1,000) (the "Earnest Money Deposit"), which Earnest Money Deposit shall be non-refundable, except upon default by the Seller. The Earnest money deposit shall be held in a non-interest bearing account, and applied to the purchase price at closing.

7. **Contingency Period.** The Purchaser shall have sixty (60) days after the Effective Date (the "Contingency Period"), in which to conduct due diligence and determine the suitability of the Property for the purpose intended by the Purchaser. During the Contingency Period, the Purchaser may terminate this Contract at its sole discretion and receive the return of Earnest Money Deposit.

8. **Other Contingencies.** This Contract is subject to the following contingency that must be cleared prior to closing: approval by the U.S. Bankruptcy Court for the Southern District of Mississippi in Cause No. 16-50775-KMS. The obligation of the Purchaser to perform under the terms of this Contract is specifically subject to Seller's submission to Purchaser's attorneys for



their approval of the following documents prior to submission to the U.S. Bankruptcy Court: the Motion for authority to sell the real property described herein, the Order authorizing the sale of the property described herein, and the manner of notice. The sale order must provide that Purchaser is a "good faith" purchaser as defined in Section 363(m) of the Bankruptcy Code. The sale order must release the real property described herein from any liens, and transfer any the liens encumbering the property to the proceeds of the sale.

9. **Brokers Fees.** There are no brokerage fees or real estate commissions to be paid in connection with this transaction. Any such claims shall be the sole responsibility of the Seller.

10. **Improvements.** All improvements presently located on the Property, if any, are included in the Purchase Price.

11. **Prorations.** All property taxes, special assessments, and rents shall be prorated as of the date of closing.

12. **Transfer of Title.** Title shall be conveyed by a Warranty Deed from Seller to Purchaser. Title to the subject property shall be free and clear of all liens and encumbrances, and shall be good, marketable, and insurable, subject only to the following items recorded in the Chancery Clerk's Office of said County: easements without encroachments, applicable zoning ordinances, protective covenants, and prior reservations and/or conveyances of mineral rights. Seller shall provide Purchaser with a Certificate of Title prepared by an attorney upon whose Certificate of Title Purchase may obtain a title insurance company qualified to do business in the State of Mississippi. Prior to the Closing or at the Closing, Seller shall satisfy all outstanding mortgages, deeds of trust, special liens, and all other liens which encumber the real property described herein. In the event of defects of in the Title that cannot be cured by the designated Closing Date, Purchaser, at its option, may either: (a) cancel this contract, in which case all earnest money deposited shall be returned; (b) accept title as is and close; or (c) if the defects are of such a character that they can be remedied by legal action, permit Seller reasonable time to perform this curative work at Seller's expense, and in the event that the Seller fails to time commence curative work, the Purchase may, at its sole option, commence the same. In the event Purchaser elects option (c), Seller agrees to cooperate and hereby authorizes Purchaser to proceed on behalf of Seller in any reasonable curative action; and the cost of any such action shall be borne by the Seller at the closing only. In the event that such curative action is commenced, the time specified herein for closing of this sale shall be extended for a reasonable period necessary to complete such action.

13. **Closing Costs.** Seller shall pay the cost of escrow, document preparation costs, and closing. Purchaser shall pay the cost of title abstracts, recording fees, lender charges, surveys, appraisals and title insurance. Each party shall pay its own attorney's fees.

14. **Possession.** Possession of the Property shall be delivered to Purchaser at closing.

15. **Default.**

- a. In the event that either party shall fail to timely perform any material obligation hereunder, then the other party shall give written notice thereof, specifying the non-performance, and if the non-performance is still continuing five (5) days after such notice, then the non-performing party shall be in default hereunder; provided however that if such non-performance is incapable of being cured within such a five (5) day period, but the non-performing party diligently begins performing a cure thereof, and effects a cure thereof within thirty (30) days of such written notice, then there shall be deemed to be no default.
- b. If the Purchaser fails to timely close this transaction, other than due to Seller's default, Seller shall be entitled to terminate this Contract, and shall be entitled to the Earnest Money Deposit and other remedies available at law and/or equity.
- c. If Seller defaults in performing any of the Seller's obligations under this Agreement for any reason, other than due to Purchaser's default, Purchaser may, seek specific performance of this Agreement, and any other remedy at law or in equity.

16. **Eminent Domain.** If, before Closing, proceedings are commenced for the taking by exercise of the power of eminent domain of all or a part of the Property which would render the Property unacceptable to Purchaser or unsuitable for Purchaser's intended use, Purchaser shall have the right, by giving notice to Seller within thirty (30) days after Seller gives written notice of the commencement of such proceedings to Purchaser, to terminate this Contract, in which event this Contract shall terminate and all Earnest Money shall be refunded to Purchaser. If, before the Closing Date, Purchaser has the right to terminate this Contract pursuant to the preceding sentence but Purchaser does not exercise such right, then this Contract shall remain in full force and effect and, at Closing, the condemnation award (or, if not theretofore received, the right to receive such award) payable on account of the taking shall be transferred to Purchaser. Seller shall give written notice to Purchaser promptly after Seller's receiving notice of the commencement of any proceedings for the taking by exercise of the power of eminent domain of all or any part of the Property. Purchaser shall have a period of thirty (30) days after Seller has given the notice to Purchaser required by this Paragraph to evaluate the extent of the taking and make the determination as to whether to terminate this Contract. If necessary, the Closing Date shall be postponed until Seller has given the notice to Purchaser required by this Paragraph and the period of thirty (30) days described in this Paragraph has expired.

17. **Termination.** This Contract shall terminate upon occurrence of one of the following events (a) closing of the transaction; (b) Seller's election to terminate upon failure of Purchaser to timely close without default of Seller; (c) at the election of the Purchaser during the Contingency Period or (d) upon mutual Contract of the Parties.

18. **OTHER CONTRACTUAL PROVISIONS.**

- a. **Notices.** Any notice to be given or to be served upon any party hereto in connection with this Contract must be in writing, and may be given by certified mail, with return receipt requested, or overnight delivery service, with signature of recipient required, or via facsimile with electronic confirmation, and shall be deemed to have been given and received when such notice is received by the addressee, properly addressed, with postage or courier fee prepaid. Such notices shall be given to the parties hereto at the following addresses:

FOR SELLER: Clement B. Saucier, III
200 Laneuse Street
Biloxi, MS 39530
csaucier@saucierroofing.com

WITH COPY TO: Patrick A. Sheehan
Sheehan Law Firm, PLLC
429 Porter Avenue
Ocean Springs, MS 39564
(228) 875-0572 / fax (228) 875-0895
pat@sheehanlawfirm.com

FOR PURCHASER: Frederick T. Hoff, Jr.
Jones Walker
2510 14th Street, Suite 1125
Gulfport, MS 39502
(228) 864-8536
Fhoff@joneswalker.com

Any party hereto may, at any time by given written notice to the other party hereto, designate any other address in substitution of the foregoing address to which such notice shall be given and other parties to whom copies of all notices hereunder shall be sent.

- b. **Entire Contract: Modification.** This Contract, subject to approval of the Bankruptcy Court, as set out in Paragraph 3, above, along with any exhibits hereto and documents specifically incorporated by reference into this Contract, embodies and constitutes the entire understanding between the parties with respect to the transaction contemplated herein. All prior or contemporaneous contracts, understandings, representations, and statements, oral or written, are merged into this Contract. Neither this Contract nor any provisions hereof may be waived, modified, amended, discharged, or terminated except by an instrument in writing signed by the party against whom the enforcement of such waiver, modification,

amendment, discharge or termination is sought, and then only to the extent set forth in such instrument.

- c. **Applicable Law.** This Contract shall be governed by, and construed in accordance with, the laws of the State of Mississippi.
- d. **Binding Effect.** This Contract shall be binding upon and inure to the benefit of the parties hereto and their successors and assigns.
- e. **Severability.** In case any one or more of the provisions contained in this Contract shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Contract shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.
- f. **Confidentiality.** The Parties agree that this Contract, including its existence and contents shall be held in confidence and not disclosed to third parties, except for the Purchaser's lenders and its agents, and agents of the Purchaser as necessary for due diligence, appraisals and surveys.
- g. **Force Majeure.** In the event of a Natural disaster, war, terrorist attack, man made disaster of any type affecting the potential use of the Property, this Contract shall be superseded and extended for such period of time for the occurrence of such event until such condition is abated.
- h. **Drafting.** This Contract shall be construed as if jointly drafted, with each party being represented by counsel in negotiating and drafting. The masculine, feminine and neuter genders shall each include the others, and the singular shall include the plural and the plural the singular, except where context specifically dictates otherwise.
- i. **Time.** Time is of the essence in the performance of this Contract. Wherever under the terms and conditions of this Contract the time for performance falls upon a Saturday, Sunday or legal holiday, such time for performance shall be extended to the next business day thereafter. Whenever a number of days is specified, it shall mean calendar days unless otherwise specified. Business days shall be Mondays through Fridays excluding state and national holidays.
- j. **Counterparts.** This Contract may be executed in counterparts, each of which shall be an original, but all of which shall constitute one and the same Contract.

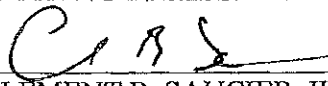
k. Facsimile. A facsimile copy of this Contract, when executed by a party and transmitted via fax or email to the other party shall be binding on the signing and transmitting party, and such facsimile copy shall be considered an original for all purposes.


SELLER:

PURCHASER:

SAUCIER BROS. ROOFING, INC.
DEBTOR IN POSSESSION

GOLLOTT INVESTMENTS, LLC

By: 
CLEMENT B. SAUCIER, III, Manager

By: 

Date: 9/13/16

Date: 9-7-16